

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (_Agreement_) is entered into between the United States of America, acting through the United States Department of Justice (the _United States_) and BHS Transitional Corporation ("BHSTC") and the *qui tam* Relator, Maryann Gola (Relator), (hereafter referred to as _the Parties_), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Brandywine Hospital during all relevant periods covered by this Agreement was an acute care hospital located in Chester County, Pennsylvania. On May 31, 2001 Brandywine Hospital, a not-for-profit hospital, conveyed its assets to Community Health Systems, a Tennessee based corporation and Coatesville Hospital Corporation, for-profit hospital corporations. At the time of the transaction the previous Brandywine Hospital was renamed BHSTC and continues as a corporate entity solely to administer the dissolution of BHSTC.

B. The United States contends that BHSTC submitted or caused to be submitted claims for payment to the Medicare Program (_Medicare_), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg.

C. On October 17, 2001, the Relator filed a *qui tam* Complaint under seal, alleging violations of the False Claims Act, 31 U.S.C. §§ 3729-3733 by Brandywine Hospital in a case Docketed at CA No. 01-5265 (E.D. Pa.) (the Civil Action). Thereafter, the United States investigated the allegations raised in the *qui tam* action and is prepared to intervene, contending that it has certain civil monetary claims against BHSTC under the False Claims Act, other federal statutes and/or common law doctrines, for engaging in the following conduct during the period from 1997 to 2001: participating in relationships with Dr. Leonard Ginsburg (Ginsburg), Retina and Diabetic Eye Services (RDES), the Moore Eye Institute (MEI) and Eye Services MSO, Inc. (MSO), wherein BHSTC provided Director fees, space, equipment, and other services to Ginsburg, RDES, MEI and MSO in violation of the anti-kickback statute, 42 U.S.C. § 1320a-7b(b) and the Stark law, 42 U.S.C. § 1395nn, (hereinafter referred to as the _Covered Conduct_).

D. BHSTC denies the contentions of the United States as set forth in Paragraph C, above.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. BHSTC agrees to transfer to the United States, pursuant to instructions provided by the Office of the United States Attorney, the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) (the Settlement Amount) within ten days of the effective date of this Agreement. In addition, BHSTC will transfer to the United States, pursuant to written instructions provided by the Office of the United States Attorney, the additional amount of Thirty-Seven Thousand, Four Hundred Fifty-One Dollars and Twenty-Five Cents (\$37,451.25) which represents the Relator's share of the Settlement Amount.

2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of BHSTC set forth in this Agreement, conditioned upon BHSTC's payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release BHSTC and its predecessors, successors, assigns, and transferees from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including BHSTC;) are any and all of the following:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Agreement;

(6) Any claims based on a failure to deliver items or services due;

(7) Any civil or administrative claims against individuals, including former directors, officers, employees, agents or shareholders of defendant BHSTC who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

4. BHSTC waives and will not assert any defenses BHSTC may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution or administrative action. BHSTC agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

5. BHSTC fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which BHSTC has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. The United States will, pursuant to 31 U.S.C. § 3730(d)(1), pay the Relator her share of the Settlement Amount made to it, within a reasonable time of its receipt of same from BHSTC. The United States has no obligation to disburse any monies to the Relator unless and until the United States receives the Settlement Amount from BHSTC. BHSTC's payment to the Relator of the Relator's attorneys' fees and costs, as required by 31 U.S.C. § 3730(d), will be resolved by separate agreement between the Relator and BHSTC, or by Court Order.

7. The Relator and BHSTC agree that the Relator's Share and the Relator's attorneys' fee, referenced in Paragraph 6, above, when the latter is resolved by separate agreement or by Court Order, shall be in full satisfaction of all claims, known or unknown, that the Relator may have against BHSTC and its partners, affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of their current or former directors, officers, and employees, on account of her initiation of the Civil Action, or any other theory, and is inclusive of all claims the Relator, her successors and assigns, or their counsel may have for attorneys'

fees, costs and expenses in connection with the Civil Action or any other theory. For and in consideration of such payment, the Relator, for herself, her heirs, successors, and assigns, releases and forever discharges BHSTC, and each of its partners, parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of their current or former directors, officers, and employees, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, whether or not known or suspected at this time, which the Relator ever had, owned or held or hereafter can, shall or may have against BHSTC.

BHSTC and each of its partners, parents, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of its current or former directors, officers and employees, release and forever discharge Relator, and each of her heirs, successors, assigns, attorneys and agents, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, whether or not known or suspected at this time, which BHSTC, and each of its parents, partners, affiliates, divisions, subsidiaries, predecessors, successors, assigns, transferees, attorneys and each of their current or former directors, officers and employees, ever had, owned or held or hereafter can, shall or may have against the Relator.

8. Relator agrees to release the United States, its officers, agents and employees, from any liability arising from the filing of the Civil Action, including any claims to a share of the proceeds pursuant to 31 U.S.C. § 3730(d), subject to her receipt of the Relator Share, as described in Paragraph 6.

9. The Amount that BHSTC must pay pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and BHSTC agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. BHSTC agrees to the following:

(a) Unallowable Costs Defined: all costs (as defined in the Federal Acquisition Regulations (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and

official program directives promulgated thereunder) incurred on or after the effective date of this Agreement by or on behalf of BHSTC, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the Covered Conduct,
- (2) the United States' audit(s) and civil investigations(s) of the Covered Conduct,
- (3) BHSTC's investigation, defense, and any corrective actions undertaken in direct response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payment BHSTC makes to the United States pursuant to this Agreement and any payments that BHSTC may make to the Relator.

(All costs described or set forth in this Paragraph 10(a) are hereafter, unallowable costs).

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by BHSTC, and BHSTC will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by BHSTC or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: BHSTC further agrees that within 90 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in Paragraph 10(a)) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by BHSTC or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. BHSTC agrees that the United States, at a minimum, will be entitled to recoup from BHSTC any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment due after the adjustments have been made shall be paid to the United States pursuant to the

direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by BHSTC or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on BHSTC or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

11. BHSTC covenants to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement. Upon reasonable notice, BHSTC will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control relating to the Covered Conduct.

12. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

13. BHSTC agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. BHSTC waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

14. BHSTC expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3). Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to BHSTC, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

15. With the exception of the Relator's attorneys fees as described in Paragraph 6, each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. BHSTC and the Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

17. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction

and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania.

18. The parties agree that they will jointly request that the Court dismiss, with prejudice, all allegations against Brandywine Hospital, in the *qui tam* action captioned at CA No. 01-5265 (E.D. Pa.).

19. With the exception of any agreement between the Relator and BHSTC as to attorneys fees, as described in Paragraph 6, this Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

20. The undersigned individuals signing this Agreement on behalf of BHSTC represent and warrant that they are authorized by BHSTC to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN

United States Attorney
Eastern District of
Pennsylvania

DATED: _____

BY: _____
VIRGINIA A. GIBSON
Chief, Civil Division
United States Attorney's Office
Eastern District of Pennsylvania

DATED: _____

BY: _____
DAVID R. HOFFMAN
Assistant United States Attorney
Eastern District of Pennsylvania

BHS Transitional Corporation - DEFENDANT

DATED: _____

BY:

DATED: _____

BY:

SANFORD V. TEPLITZKY, ESQUIRE
Ober, Kaler, Grimes & Shriver
120 East Baltimore Street
Baltimore, MD 21202-1643
Counsel for
BHS Transitional Corporation

RELATOR

DATED: _____

BY:

MARYANN GOLA

DATED: _____

BY:

BRUCE J. GOLDSTEIN, ESQUIRE
Wade, Goldstein, Landau
& Abruzzo, PC
61 Cassatt Avenue
Berwyn, PA 19312
Counsel for Relator